

# McNamara Declaration

## Exhibit 114

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HACHETTE BOOK GROUP, INC.,  
HARPERCOLLINS PUBLISHERS LLC,  
JOHN WILEY & SONS, INC., and  
PENGUIN RANDOM HOUSE LLC

Plaintiffs,

v.

INTERNET ARCHIVE and DOES 1 through  
5, inclusive

Defendants.

Case No. 1:20-CV-04160-JGK

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**DEFENDANT INTERNET ARCHIVE'S OBJECTIONS AND RESPONSES TO  
PLAINTIFFS' SECOND SET OF INTERROGATORIES**

6. The fact that the Internet Archive has responded to part or all of an Interrogatory is not intended to and shall not be construed as a waiver by the Internet Archive of any objection to such request.

7. The Internet Archive hereby incorporates by reference each and every objection to instructions and definitions set forth above into each and every specific response set forth below, whether or not separately set forth therein. A specific response may repeat an objection to an instruction or definition for emphasis or for some other reason. Failure to include any objection in any specific response is not a waiver of any objection to that response. In addition, where any Plaintiff has objected to a parallel interrogatory on the ground that a particular inquiry is not the proper subject of interrogatories, the Internet Archive incorporates by reference those parallel objections.

### **RESPONSES AND OBJECTIONS**

#### **INTERROGATORY NO. 11:**

State, per year, the number of libraries who asked Internet Archive to digitize physical books not in the public domain and include the resulting digital copies in the Internet Archive's inlibrary collection (<https://archive.org/details/inlibrary>) for lending.

#### **RESPONSE TO INTERROGATORY NO. 11:**

In addition to its General Objections, the Internet Archive objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, to the extent that the Interrogatory is requiring the Internet Archive particularly to ascertain the copyright status of books, and in responding to this Interrogatory, the Internet Archive will refer to items in the "inlibrary" collection, which relate to books the Internet Archive does not know to be in the public domain. In responding to this interrogatory, the Internet Archive is not making any representation as to the copyright status of the items in its inlibrary collection. The Internet

Archive objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, particularly to the extent it is not limited to a time relevant to the above-captioned lawsuit. The Internet Archive objects to this Interrogatory to the extent it is not limited to the Works. The Internet Archive objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, common-interest privilege, or any other applicable privilege or protection. The Internet Archive also objects to this Interrogatory as improper under Local Rule 33.3 which permits the service of non-contention Interrogatories, other than with respect to the topics outlined in Local Rule 33.3(a), only where they are a more practical method of obtaining the information sought than a request for production or a deposition, or if ordered by the Court. This Interrogatory does not meet those requirements.

Further, the phrase “[s]tate, per year, the number of libraries who asked Internet Archive to digitize physical books” is unintelligible, impermissibly vague, and unclear, as well as unduly burdensome as it purports to seek information that Plaintiffs may derive from the Internet Archive’s voluminous document production in this case. Hence, in a good faith effort to respond fully to the Interrogatory as written, the Internet Archive will provide, for the 2017–2021 period, per-year numbers of libraries other than the Internet Archive, based on the earliest scan date of the item associated with that library that has been digitized by the Internet Archive and currently included in the inlibrary collection. Inclusion of a library in this count does not necessarily indicate that books physically in that library’s possession are currently included in the inlibrary collection.

Subject to and without waiving the foregoing General and Specific Objections, the Internet Archive responds as follows: The number of libraries contributing an item currently in

the “inlibrary” collection, divided by the year of the earliest scan date of such an item contributed by that library (other than Internet Archive), is:

- Year 2017: 5 libraries
- Year 2018: 6 libraries
- Year 2019: 6 libraries
- Year 2020: 1 library
- Year 2021: 3 libraries

The Internet Archive’s investigation is ongoing. To the extent necessary, the Internet Archive will amend or supplement this Response as discovery continues.

**INTERROGATORY NO. 12:**

State, per year, the number of libraries who participated in the Open Libraries program (<https://openlibraries.online>) in a manner that the alleged overlap between the library’s physical holdings and the Internet Archive’s digital holdings resulted in an increase in the eligible number of concurrent loans from Internet Archive for one or more titles not in the public domain.

**RESPONSE TO INTERROGATORY NO. 12:**

In addition to its General Objections, the Internet Archive also objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, to the extent that the Interrogatory is requiring the Internet Archive particularly to ascertain the copyright status of books, and, in responding to this Interrogatory, the Internet Archive will refer to items in the “inlibrary” collection, which relate to books the Internet Archive does not know to be in the public domain. In responding to this Interrogatory, the Internet Archive is not making any representation as to the copyright status of the items in its inlibrary collection. The Internet Archive objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, particularly to the extent it is not limited to a time relevant to the above-

captioned lawsuit. The Internet Archive objects to this Interrogatory to the extent it is not limited to the Works. The Internet Archive objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, common-interest privilege, or any other applicable privilege or protection. The Internet Archive also objects to this Interrogatory as improper under Local Rule 33.3 which permits the service of non-contestation Interrogatories, other than with respect to the topics outlined in Local Rule 33.3(a), only where they are a more practical method of obtaining the information sought than a request for production or a deposition, or if ordered by the Court. This Interrogatory does not meet those requirements.

Subject to and without waiving the foregoing General and Specific Objections, the Internet Archive responds as follows:

<b>Partner Library</b>	<b>Date Added</b>	<b>Date Removed</b>
American University	2021-01-15	
American University Washington College of Law	2020-12-11	
Anabaptist Mennonite Biblical Seminary Library	2018-11-19	
Barry University	2020-05-08	
Belmont University	2020-07-28	
Binghamton University	2020-09-21	
Boston University Libraries	2019-01-09	
Boston Public Library Jordan Collection	2019-01-16	
Bowdoin College Library	2020-04-20	
Bryn Mawr	2021-01-28	
California Academy of Sciences	2018-11-19	
California State University Fresno	2019-07-26	
The Catholic University of America	2020-11-02	
City University of New York	2020-07-02	2021-07-28
The Claremont Colleges	2020-03-26	
CMS Business School	2020-09-21	
Corona-Norco Unified School District	2020-06-24	
Cowles Library	2019-12-12	
Denver Public Library	2019-03-18	
Dartmouth Library	2020-04-07	

Framingham State University	2021-03-07	
George Washington University	2020-05-11	
Georgetown University Law Library	2018-11-19	
Hamilton Public Library	2019-05-01	
Howard University Libraries	2020-12-17	
Ithaca College	2020-09-09	
John Stewart Memorial Library at Wilson College	2020-12-21	
Johns Hopkins	2020-03-30	
Kalamazoo College Library	2018-11-14	
Kalamazoo Public Library	2019-03-18	
Longwood Gardens	2020-11-02	
Manchester City Library	2020-05-28	
Marymount University	2020-12-21	
Occidental College Library	2020-03-26	
Philadelphia Museum of Art	2021-01-28	
Randolph-Macon College	2020-03-24	
Rhodes College	2020-08-07	
Rice University	2020-04-02	
Ruth Enlow Library	2018-08-27	
Salisbury Free Library	2020-04-20	
San Francisco Public Library	2018-11-19	
Sonoma County Libraries	2019-01-09	
South Asia Institute of Advanced Christian Studies (SAIACS)	2021-04-20	
Spokane Public Library	2019-01-29	
St. Mary's County Library (MD)	2018-11-19	
Swarthmore College	2020-09-13	
Texas A&M University Evans Library	2020-03-24	2021-07-28
Texas A&M University Medical Sciences Library	2020-03-24	2021-07-28
Tulsa Community College	2020-08-07	
UH Maui College	2020-09-09	
University of Arizona Libraries	2020-04-11	
University of Colorado Boulder	2020-04-17	
University of the District of Columbia	2020-12-11	
University of New Brunswick	2021-05-17	
University of Northern Iowa	2021-04-20	
University of Oklahoma Libraries	2019-12-02	
University of Rochester River Campus Libraries	2020-09-21	
University of the West	2020-06-06	

**INTERROGATORY NO. 16:**

State, per year, the number of Internet Archive accounts held by people with print disabilities (<https://archive.org/details/printdisabled?tab=about>).

**RESPONSE TO INTERROGATORY NO. 16:**

In addition to its General Objections, the Internet Archive objects to this Interrogatory as vague and ambiguous, specifically with regard to the terms “accounts held by people with print disabilities.” The Internet Archive maintains records of how many users with print disabilities have accounts that have been given access to materials limited to those with print disabilities, and provides this Response based on those records. The Internet Archive objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, particularly to the extent it is not limited to a time relevant to the above-captioned lawsuit. The Internet Archive objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, common-interest privilege, or any other applicable privilege or protection.

Subject to and without waiving the foregoing General and Specific Objections, the Internet Archive responds as follows:

Year	Print Disability Access Eligible Users Added	Total Print Disability Access Eligible Users
2017	2	2
2018	282	284
2019	2257	2541
2020	4116	6657
2021	4234	10891

The Internet Archive’s investigation is ongoing. To the extent necessary, the Internet Archive will amend or supplement this Response as discovery continues.

**INTERROGATORY NO. 17:**

State, per year, the number of loans by Internet Archive of digitized copies of books not in the public domain in the Internet Archive’s inlibrary collection (<https://archive.org/details/inlibrary>) to accounts held by people with print disabilities (<https://archive.org/details/printdisabled?tab=about>).

**RESPONSE TO INTERROGATORY NO. 17:**

In addition to its General Objections, the Internet Archive objects to this Interrogatory as vague and ambiguous, specifically with regard to the terms “accounts held by people with print disabilities.” The Internet Archive maintains records of how many users with print disabilities have accounts that have been given access to materials limited to those with print disabilities, and provides this Response based on those records. The Internet Archive objects to this Interrogatory as overly broad, unduly burdensome, and disproportionate to the needs of this case, to the extent that the Interrogatory is requiring the Internet Archive particularly to ascertain the copyright status of books, and, in responding to this Interrogatory, the Internet Archive will refer to items in the “inlibrary” collection, which relate to books the Internet Archive does not know to be in the public domain. In responding to this Interrogatory, the Internet Archive is not making any representation as to the copyright status of the items in its inlibrary collection. The Internet Archive further objects to this Interrogatory to the extent it is not limited to a time relevant to the above-captioned lawsuit. The Internet Archive objects to this Interrogatory to the extent it is not limited to the Works. The Internet Archive objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, common-interest privilege, or any other applicable privilege or protection.

Further, the term “loans” is unintelligible, impermissibly vague, and unclear. In responding to this Interrogatory, the Internet Archive provides the number of loans, but

represents that it is not synonymous with the number of downloads, which is a number that is not reasonably accessible to the Internet Archive. Indeed, the number of “loans” does not include the number of DAISY downloads.

Subject to and without waiving the foregoing General and Specific Objections, the Internet Archive responds as follows: The following are the number of loans to print disabled users, by month, starting with April 2019, which is the earliest full month in which such data exists:

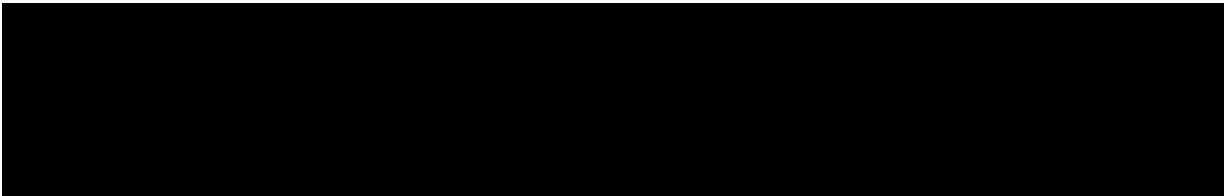
<b>Month and Year</b>	<b>Print Disabled Loans</b>
April 2019	1076
May 2019	1841
June 2019	1660
July 2019	1784
August 2019	1466
September 2019	2091
October 2019	1761
November 2019	1624
December 2019	1549
January 2020	2485
February 2020	2307
March 2020	2643
April 2020	3492
May 2020	3892
June 2020	3660
July 2020	7309
August 2020	7134
September 2020	6653
October 2020	8580
November 2020	10045
December 2020	9547
January 2021	10576
February 2021	13382
March 2021	10540
April 2021	10332
May 2021	11499
June 2021	10241
July 2021	14061

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August 2021	13363
September 2021	14535
October 2021	14915
November 2021	14180
December 2021 <sup>1</sup>	16844
<b>TOTAL to Date (as of December 21, 2021)</b>	<b>237067</b>

The Internet Archive's investigation is ongoing. To the extent necessary, the Internet Archive will amend or supplement this Response as discovery continues.

**INTERROGATORY NO. 18:**



**RESPONSE TO INTERROGATORY NO. 18:**



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<sup>1</sup> This is the total number of loans for December 1–21, 2021. Additional loans may have been made during the remainder of the month.

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Attorneys for Plaintiffs  
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JOHN WILEY & SONS, INC., and PENGUIN RANDOM HOUSE LLC

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 24, 2021, at Los Angeles, California.

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Moon Hee Lee